

Appl. No. : 10/589,154  
Filed : May 4, 2007

### REMARKS

Claims 1, 8, 18, 26, 32 and 35 have been amended. Claim 6 has been canceled. Thus, claims 1-5, 7-15, 18-22, 25-28 and 31-36 are now pending in the present application. Support for the amendment to claim 1 may be found in original claim 6. Thus, no new matter has been added. Reconsideration and withdrawal of the present objection and rejections are respectfully requested.

#### Objection to abstract

The Examiner objected to the abstract as exceeding 150 words. The abstract as amended now contains less than 150 words, and is therefore in compliance with MPEP §608.01(b).

#### Rejections under 35 U.S.C. § 112, second paragraph

Claims 8, 14, 18 and 35-36 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite.

The Examiner considered the scope of claim 8 to be confusing, since it depends on itself. Claim 8 as amended properly depends on claim 7.

With regard to claim 14, the Examiner stated that the meaning of "firmness of the gelling glaze is at least multiplied by factor 2 after contact with food support" was unclear. This expression means that the firmness (texture parameter which is well known to those skilled in the art of jellified compositions) of the pastry glaze composition is increased (at least multiplied by a factor of 2) between an initial state (i.e. before jellification) and after contact with a suitable food product support such as apricots. Study of the texture (firmness) evolution of the glaze composition according to the present invention is well detailed in paragraphs [0132] to [0137] of the application as published. Thus, Applicants submit that claim 14 is not indefinite.

The Examiner contended that the phrase "for instance with a brush" in claim 18 is unclear as to whether the claim actually requires a brush, and that recitation of "easy" and "easily" in claim 18 are relative terms which renders the claim indefinite. Claim 18 as amended no longer recites the terms considered by the Examiner to be indefinite.

It was also noted by the Examiner that claim 35 recited improper Markush language. Claim 35 as amended recites the proper Markush language suggested by the Examiner.

Appl. No. : 10/589,154  
Filed : May 4, 2007

In view of the comments presented above, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

Rejections under 35 U.S.C. § 103(a)

**Rejections based on NPL “Apricot Glaze”**

Claims 1-4, 6-15, 18-22, 25-27, 28 and 31-36 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over NPL “Apricot Glaze” in view of Wiggett et al. (GB 2078082) and Smadar (US 3,650,766)

Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over NPL “Apricot Glaze” in view of Wiggett et al. (GB 2078082) and Smadar (US 3,650,766) and further in view of Holscher et al. (US 4,762,721).

The currently claimed invention addresses the problem of providing an (in-situ) pastry glaze composition which forms a pastry glaze upon contact with a food product support. The presently claimed pastry glaze composition will only jellify and turn into the final pastry glaze when applied to a food product support, and not before. This liquid or semi-liquid pastry glaze (precursor) composition forms a pastry glaze, and does not gel upon storage. Thus, the currently claimed compositions can be used to form on demand and in-situ pastry glazes on food product supports. In some embodiments, such as those recited in claim 3, the glaze composition is liquid or semi-liquid in appearance at room temperature.

The cited “Apricot Glaze” reference does not teach or suggest formation of a gel, let alone jellification, only when the composition is applied to a food product as recited in the present claims. As noted in MPEP § 2142.01 (VI), a “prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).” “Apricot Glaze” teaches that the “glaze” does not look jelly-like (see line 8). Thus, “Apricot Glaze” effectively teaches away from jellification upon application to a food product support, as it requires the “glaze” not to look jelly-like.

Wiggett et al. does not teach formation of a pastry glaze, but instead teaches spreadable fruit compositions (such as marmalade or jam), or pourable fruit compositions (such as coulis or fruit puree) (see examples).

Appl. No. : 10/589,154  
Filed : May 4, 2007

As acknowledged by the Examiner in the Office Action at page 6, last paragraph, neither "Apricot Glaze" nor Wiggett et al. teach that jellification of a glaze composition that provides the recited amount of  $\text{Ca}^{2+}$  and/or other ions needed for jellification, occurs when the glaze is applied to a food product support. Likewise, neither "Apricot Glaze" nor Wiggett et al. teach or suggest a pastry glaze composition wherein the level of free natural  $\text{Ca}^{2+}$  is up to about 50 ppm.

Smadar discloses first coating the food product with a solution containing a skin forming material, and then contacting the coated product with a (external) source of alkaline earth ions (see column 3, lines 28-38). In contrast, the present claims recite a level of  $\text{Ca}^{2+}$  ions and/or other ions that is insufficient for jellification of the pastry glaze composition before application to a food product, which provides the extra amount of  $\text{Ca}^{2+}$  ions and/or other ions needed for jellification. Thus, the extra amount of  $\text{Ca}^{2+}$  ions and/or other ions needed for jellification is provided by the food product itself (such as e.g. apricots or other fruit products), and not from an external source as described by Smadar. Holscher et al. is relied upon for its disclosure of the thixotropic property of a glazing composition with the addition of xanthan gum, but does not remedy the deficiency in the teaching of Apricot Glaze, Wiggett and Smadar.

These advantageous properties are neither disclosed nor suggested by the cited references, and could not have been predicted by one having ordinary skill in the art. Thus, the unexpected advantages strongly support the nonobviousness of the present claims over the cited references.

#### **Rejections based on Miller et al.**

Claims 1-4, 6-15, 18-22, 25-27, 28 and 31-36 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Miller (US 1,761,738) in view of Wiggett et al. (GB 2078082) and Smadar (US 3,650,766).

Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Miller (US 1,761,738) in view of Wiggett et al. (GB 2078082) and Smadar (US 3,650,766) and further in view of Holscher et al. (US 4,762,721).

Present claim 1 as amended recites a pastry glaze composition, obtained by solubilizing a  $\text{Ca}^{2+}$  reactive low methoxylated-amidated pectin with a degree of methoxylation <50% and a degree of amidation up to 30% but not 0%, thereby obtaining a pastry glaze that before application, is liquid or semi-liquid in appearance, and that contains  $\text{Ca}^{2+}$  ions and/or other ions needed for jellification in an amount that is insufficient for jellification before application,

Appl. No. : 10/589,154  
Filed : May 4, 2007

wherein the level of free natural  $\text{Ca}^{2+}$  is up to about 50 ppm; so that the glaze only jellifies when applied onto a food product support that provides the extra amount of  $\text{Ca}^{+2}$  ions and/or other ions needed for jellification

Miller discloses a pastry recipe, and a method for making a pastry glaze in which water or milk is added to sugar, mixed until smooth, followed by an optional addition of vanilla and cream of tartar. This is the only disclosure of a glaze by Miller. Thus, Miller does not teach or suggest any of the limitations of claim 1 as noted above. As noted above, Wiggett et al. does not teach formation of a pastry glaze, but instead teaches spreadable fruit compositions (such as marmalade or jam), or pourable fruit compositions (such as coulis or fruit puree) (see examples). As acknowledged by the Examiner in the Office Action at page 6, last paragraph, Wiggett et al. does not teach that jellification of a glaze composition that provides the recited amount of  $\text{Ca}^{2+}$  and/or other ions needed for jellification, occurs when the glaze is applied to a food product support, let alone suggest a pastry glaze composition wherein the level of free natural  $\text{Ca}^{2+}$  is up to about 50 ppm. Smadar and Holscher are discussed above. Thus, the deficiency in the teaching of Miller is not remedied by Wiggett et al., Smadar or Holscher.

In summary, Applicants have surprisingly and unexpectedly discovered that the selected amount of free natural  $\text{Ca}^{2+}$  contained in the pastry glaze composition allows obtaining optimum preservation of the liquid or semi-liquid texture before application of the pastry glaze composition onto a food product support, while still ensuring strong jellification properties of the pastry glaze composition only after application of the latter onto the food product support. The carefully selected range of free natural  $\text{Ca}^{2+}$  contained in the pastry glaze composition ensures optimum balance between strong jellifying properties of the pastry glaze composition after application onto a food product support and preservation of suitable liquid or semi-liquid texture of the pastry glaze composition before application.

In view of the comments presented above, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a).

**No Disclaimers or Disavowals**

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather,

Appl. No. : 10/589,154  
Filed : May 4, 2007

any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

#### CONCLUSION

Applicants submit that all claims are in condition for allowance. However, if minor matters remain, the Examiner is invited to contact the undersigned at the telephone number provided below. If any additional fees are required, please charge these to Deposit Account No. 11-1410. Should there be any questions concerning this application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 2/25/10

By: 

Neil S. Bartfeld, Ph.D.  
Registration No. 39,901  
Agent of Record  
Customer No. 20,995  
(619) 235-8550